

1 Stephen W. Steelman
THE LAW OFFICE OF STEPHEN W. STEELMAN
2 22 Battery Street, Suite 333
San Francisco, CA 94111
3 Tel. (415) 593-3777
Fax (415) 593-3778
4

Attorney for Plaintiff
5 Alexander P. Sommer
6
7
8

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

-oo0oo-

11 ALEXANDER P. SOMMER, an individual)

CASE NO. CIV 064927

12 Plaintiff,)

13 v.)

**DECLARATION OF
STEPHEN W. STEELMAN
IN OPPOSITION TO
DEFENDANTS' MOTION FOR
SANCTIONS**

14)
15 UNUM PROVIDENT CORPORATION,)
UNUM PROVIDENT LIFE INSURANCE)
16 COMPANY OF AMERICA, FIRST UNUM)
LIFE INSURANCE COMPANY; PAUL)
17 REVERE LIFE INSURANCE COMPANY;)
UNITED STATES LIFE INSURANCE)
18 COMPANY; AND DOES 1-300,)

19 Defendants.)
20)
21
22
23
24
25
26
27
28

1 I, Stephen W. Steelman, am attorney of record to plaintiff Alexander P. Sommer herein.
2 I am, accordingly, thoroughly familiar with the facts and circumstances underlying this matter and
3 could, and would if called to do so testify competently to the following:

4 1. During the years 2003 and 2004, I represented plaintiff Alexander P. Sommer in a legal
5 malpractice action against his former attorney. That attorney had represented Mr.

6 Sommer in the cases referred to by defendants herein as Sommer 1, 2 and 3;

7 2. Plaintiff was disappointed with the outcome of that legal malpractice action and felt,
8 rightly, that he had not been adequately compensated for the losses suffered as a result of
9 the wrongs inflicted by his former counsel's handling of his cases against these present
10 defendants;

11 3. After the settlement of that legal malpractice action, and during or about November
12 2005, I became aware that the State of California Department of Insurance had conducted
13 an investigation of these present defendants (hereinafter "UNUM"), that such
14 investigation included, *inter alia* an investigation of the claims handling practices of
15 these defendants and, that as a result of such investigation, the Insurance Commissioner
16 of the State of California had levied a fine against UNUM in the amount of some Eight
17 Million Dollars (\$8,000,000.00) and had, further, issued certain "findings" against the
18 insurers as set forth in the Complaint on file herein at ¶ 29 and in **EXHIBIT "F"** to the
19 Declaration of Stephen Steelman in Opposition, filed and served concurrently herewith;

20 4. I communicated this information to plaintiff because I believed that it would give him
21 some satisfaction. In fact, and perhaps foreseeably, the information angered Alex, in
22 effect, opening old wounds;

23 5. After thinking about all of this for a few weeks, I contacted Alex and his son, Christian,
24 and asked them whether they might be interested in bringing a suit against UNUM based
25 on the Insurance Commissioner's findings. In response to my query, Alex and his son
26 asked me to perform certain research to determine whether or not they might have a
27 viable cause of action, given the previous litigation;

28 6. I agreed to do so and did, in fact, perform such research. I was paid for this work.

1 7. During the course of my research, I became aware that the issue of Res Judicata would
2 have to be overcome if we were to have a chance of prevailing. I also came to believe
3 that a colorable argument could be made that any projected Res Judicata defense offered
4 by the defendants might reasonably be denied by the courts based on UNUM's stature as
5 an insurer, its demonstrable history of very bad behavior in the market place (in effect, a
6 public policy exception) and what I believed to be UNUM's fraudulent conduct of the
7 litigation of the cases referred to by defendants herein as Sommer 1, 2 and 3, which
8 might more fairly be characterized as UNUM 10,001, 10,002 and 10,003, based on the
9 amount of litigation with which our courts are burdened by the practices of this company
10 and its subsidiaries;

11 8. Based on such research and belief, I advised plaintiff that he did have a small chance of
12 prevailing in an action against defendants and that, if he decided to go forward, I would
13 represent him.

14 9. My assessment of the viability of the case was reflected in my retainer agreement which
15 contains the following passage:

16 The circumstances of my retention are as follows:

17 In 1996 Alex instituted a lawsuit against his several disability
18 insurance carriers. Such suit was based on a wrongful denial to pay
19 Alex his disability benefits. This case was dismissed, with
20 prejudice, due to the failure of Alex's then attorney, NAME
21 REDACTED, to exhaust administrative remedies. NAME
22 REDACTED appealed the court's decision all the way to the United
23 States Supreme Court who refused to consider overturning the
24 lower court's decision.

25 Alex then sued the lawyer. I represented Alex in that lawsuit.

26 Throughout my representation of Alex in the malpractice suit
27 against Mr. NAME REDACTED, Alex repeatedly expressed a
28 desire to sue his former insurers. In response to such expressions,
and as you will remember, I repeatedly told Alex that the case
against his former insurers was exhausted.

However, subsequent to the settlement of that case, the Attorneys
General of certain states as well as the *California Department of
Insurance* sued and/or entered into settlement agreements with
Alex's primary disability insurer, UNUM. As part of the settlement
between the California Department of Insurance and UNUM, the
Insurance Commissioner of the State of California has made certain
"Findings." Included among the Insurance Commissioner's

1 “Findings,” are findings of what I believe may be certain improper
2 behaviors on the part of UNUM. In January of 2006, you retained
3 me to do legal research regarding what effect, if any, these findings
4 have on the ability of Alex to, in effect, reopen his case against
5 UNUM. In fact, in as much as Alex would have any chance to
6 litigate against UNUM, such case would be based on entirely new
7 legal theories and so would not, technically, be a re-opening of
8 Alex’s old cases but entirely new cases based on entirely new legal
9 theories.

10 I want to repeat here what I told you in the e-mail I sent to Christian
11 in December, 2005, what I repeated, in writing, in the fee agreement
12 we entered into in January 2006, and what I have verbally told both
13 of you on several occasions, namely that any case against UNUM or
14 any of its subsidiary companies, is, at this point, very much an
15 uphill battle. Not only are we the proverbial David facing the
16 proverbial Goliath, we are also faced with very serious issues based
17 on the Statute of Limitations and the legal principles of Res Judicata
18 and Collateral Estoppel. As I told you, when pressed, in my office
19 to give you a percentage estimate of your chances of success in this
20 undertaking, if you had a first class lawyer such as Guy Kornblum
21 or Ed Nevin, you might stand a twenty percent chance of prevailing
22 - with me it might be fifteen percent. That might be optimistic. We
23 stand only a very slim chance of prevailing in this matter.

10. I did not commence this case for any improper purpose, such as to harass or to cause
11 unnecessary delay or needless increase in the cost of litigation. At the time I agreed to
12 enter into this case, I had performed legal research based on the facts and the law
13 relevant to the proposed case, and believed sincerely that the claims and other legal
14 contentions set forth in the Complaint are warranted by existing law or by a
15 nonfrivolous argument for the extension, modification, or reversal of existing law or the
16 establishment of new law ;

11. It is my understanding of the duty of a plaintiff’s attorney to agree to represent clients
12 who’s cases are just, even though such cases might present difficult issues. It is my
13 understanding of the duty of an attorney that he, or she, should not limit their
14 representation to clients whose cases are straightforward and will not endanger the
15 attorney’s personal reputation or economic status;

12. When I agreed to represent Alex Sommer, it was because I believed that he had been
13 grievously wronged by a company with truly remarkable record of perpetrating similar
14 wrongs against similarly injured people and of doing so simply for economic gain and at
15 the expense of their insureds. I believed that there were colorable legal arguments to be

made to advance the case and that the case made sense for the client and for our society as a whole. I believed it my duty to represent Mr. Sommer and am, moreover, *certain* that it is my duty, once having agreed to do so, not to be backed down or cowed by threats made by UNUM against my personal fortune, such as it may be, which is how I interpret these defendants repeated threats to seek sanctions against me.

Sworn, under penalty of perjury of the laws of the State of California, this 9th day of October 2007, in the City and County of San Francisco, by:

THE LAW OFFICE OF STEPHEN W. STEELMAN

/S/
STEPHEN STEELMAN
Counsel to Plaintiff
Alexander P. Sommer